

RESOLUTION NO. 2016 - 3

A Resolution authorizing the City Manager to execute a professional services contract with ECONorthwest, LLC for work related to updating tax increment finance revenue projections.

RECITALS:

WHEREAS, the McMinnville Urban Renewal Agency and its advisory committee wish to improve a portion of Alpine Avenue beyond that which is planned and financed as part of the November 2014 transportation bond;

WHEREAS, the financing for such improvement is proposed to be provided by a loan with repayment secured by a pledge of the Urban Renewal District's existing and future tax increment revenue;

WHEREAS, the Agency believes it to be financially responsible to update its four year old tax increment revenue projections in order to ensure that a revenue stream adequate to service this proposed debt will exist during the term of the loan;

WHEREAS, ECONorthwest, LLC prepared the original tax increment analysis for the McMinnville Urban Renewal Plan, has a thorough knowledge of this plan, and is recognized in Oregon as an expert in such analysis;

WHEREAS, ECONorthwest has provided a proposal for such work, which has been reviewed by City staff and, based upon this review, the firm's prior work with the Agency, and experience in such matters, staff recommends the contract for this analysis be awarded to ECONorthwest. Funding for this work is included in the Urban Renewal Agency's adopted 2015-16 budget; and

NOW, THEREFORE, BE IT RESOLVED BY THE URBAN RENEWAL AGENCY OF THE CITY OF McMINNVILLE, as follows:

Section 1. That the City Manager of the City of McMinnville is hereby authorized and directed to execute a professional services contract with ECONorthwest, LLC for work related to updating tax increment finance (TIF) revenue projections for an amount not to exceed \$5,770.

Section 2. This Resolution shall take effect immediately upon passage and shall continue in full force and effect until revoked or replaced.

Adopted by the Board this 9th day of February 2016 by the following votes:

Ayes: Drabkin, Hill, Jeffries, Menke, Ruden, Yoder

Nays: \_\_\_\_\_

Approved this 9th day of February 2016.

  
\_\_\_\_\_  
CHAIR OF THE BOARD

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

## **McMINNVILLE URBAN RENEWAL AGENCY**

### **PERSONAL SERVICES CONTRACT for TIF REVENUE FORECAST ANALYSIS**

This Contract is between the McMINNVILLE URBAN RENEWAL AGENCY, a municipal corporation established under ORS Chapter 457 (Agency) and ECONorthwest, LLC (Contractor). The Agency's Project Manager for this Contract is Doug Montgomery.

The parties mutually covenant and agree as follows:

#### **1. Effective Date and Duration.**

This contract is effective on the date at which every party has signed this contract. This contract shall expire, unless otherwise terminated or extended, on April 30, 2016.

#### **2. Statement of Work.**

The work to be performed under this contract consists of updating the tax increment revenue forecasts provided in the Agency's adopted Urban Renewal Report (Table 20) and related analysis. The statement of work, including the delivery schedule for the work, is contained in Exhibit A.

#### **3. Consideration.**

- a. Agency agrees to pay Contractor for actual hours worked, and allowable expenses incurred for accomplishing the work required by this contract, with a total sum not to exceed \$5,770.
- b. Contractor shall furnish with each invoice for services an itemized statement showing the number of hours devoted to the project by the Contractor and its agents. Agency will pay the Contractor for services within 30 days of receiving an itemized bill that has been approved by the Project Manager.
- c. Agency certifies that sufficient funds are available and authorized for expenditure to finance the cost of this contract.

#### **4. Additional Services**

Additional services, not covered in Exhibit A, shall be provided if mutually agreed upon by the parties and authorized or confirmed in writing by the Agency, and shall be paid for by the Agency as provided in this Contract in addition to the compensation authorized in subsection 3a. If authorized by the Agency, the additional services will be performed under a series of Task Orders defining the services to be performed, time of performance, and cost for each phase of services.

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## CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name (please print): Economic Consultants Oregon, LTD DBA ECONorthwest

Address: 222 SW Columbia Street, Suite 1600, Portland, Oregon 97201

Social Security #:

Federal Tax ID #:93-0639592 State Tax ID #:0220812-2

Citizenship: Nonresident alien ☐ Yes ☒ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership  
☒ Corporation ☐ Government/Nonprofit ☒ Limited Liability

Corporation

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Contracts and Exhibits A, B, C, and D are an integral part of this contract and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600

Signed by Contractor: \_\_\_\_\_

Signature/Title

Date

*NOTICE TO CONTRACTOR: This contract does not bind the McMinnville Urban Renewal Agency unless and until it has been fully executed by the appropriate parties.*

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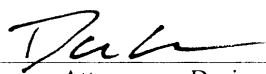
## McMinnville Urban Renewal Agency SIGNATURE

Approved: \_\_\_\_\_

Agency Administrator or Designee

Date

Reviewed: \_\_\_\_\_

  
Agency Attorney or Designee

2/9/2016

Date

**McMinnville Urban Renewal Agency**  
**STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS**

**1. Contractor is Independent Contractor**

- a. Contractor shall perform the work required by this contract as an independent contractor. Although the Agency reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, the Agency cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.
- b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit D.
- c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.
- d. If Contractor is a contributing member of the Public Employees' Retirement System, Agency will withhold Contractor's contribution to the retirement system from Contractor's compensation or payments under this contract and make a corresponding Agency contribution. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments to Contractor under this contract, except as a self-employed individual.

**2. Subcontracts and Assignment**

Contractor shall not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the Agency. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

**3. No Third Party Beneficiaries**

Agency and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

#### **4. Successors in Interest**

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.

#### **5. Early Termination**

- a. The Agency and the Contractor, by mutual written agreement, may terminate this Contract at any time.
- b. The Agency, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.
- c. Either the Agency or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

#### **6. Payment on Early Termination**

- a. If this contract is terminated under 5(a) or 5(b), the Agency shall pay the Contractor for work performed in accordance with the Contract prior to the termination date.
- b. If this contract is terminated under 5(c), by the Contractor due to a breach by the Agency, then the Agency shall pay the Contractor as provided in subsection (a) of this section.
- c. If this contract is terminated under 5(c), by the Agency due to a breach by the Contractor, then the Agency shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7, Remedies.

#### **7. Remedies**

- a. In the event of termination under 5 (c), by the Agency due to a breach by the Contractor, then the Agency may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the Agency the amount of the reasonable excess.
- b. The remedies provided to the Agency under section 5 and section 7 for a breach by the Contractor shall not be exclusive. The Agency also shall be entitled to any other equitable and legal remedies that are available.
- c. In the event of breach of this Contract by the Agency, then the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(c) and 6(b).

## **8. Access to Records**

Contractor shall maintain, and the Agency and its authorized representatives shall have access to, all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the Agency.

## **9. Ownership of Work**

All work products of the Contractor, including background data, documentation, and staff work that is preliminary to final reports, and which result from this contract, are the property of Agency. Use of any work product of the Contractor for any purpose other than the use intended by this contract is at the risk of the Agency.

## **10. Compliance with Applicable Law**

Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, 279C.830, and 279C.580 as set forth on Exhibit B. Without limiting the foregoing, Contractor expressly agrees to comply with: (I) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

## **11. Indemnity and Hold Harmless**

a. Except for the professional negligent acts covered by paragraph 11.b., Contractor shall defend, save, hold harmless, and indemnify the Agency, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this contract provided however, that nothing herein shall be construed to require indemnification of the Agency for liability attributable to the Agency's sole negligence.

b. Contractor shall defend, save, hold harmless, and indemnify the Agency, its officers, agents, and employees from all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents under this contract provided however, that nothing herein shall be construed to require indemnification of the Agency for liability attributable to the Agency's sole negligence

## **12. Insurance**

Contractor shall provide insurance in accordance with Exhibit C.

### **13. Waiver**

The failure of the Agency to enforce any provision of this contract shall not constitute a waiver by the Agency of that or any other provision.

### **14. Errors**

The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

### **15. Governing Law**

The provisions of this contract shall be construed in accordance with the laws of the State of Oregon and ordinances of the McMinnville Urban Renewal Agency, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Yamhill County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

### **16. Severability**

If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held invalid.

### **17. Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **EXHIBIT A SCOPE OF WORK**

ECONorthwest's analysis would consist of the following tasks:

- Obtain parcel-specific tax assessment data for all properties inside the Urban Renewal District from the County Assessor for the current year, as well as historical years. Summarize the data by property class (Real, Personal, Utility, and Manufactured) and compare total values to reported totals in Assessor's tables 4a and 4e. Summarize the real market value (RMV) to assessed value (AV) ratios for properties in the area to identify any potential concerns with real market values constraining appreciation of assessed values.
- Create a baseline forecast for assessed value growth, based on observed historical trends within the district, incorporating any known development projects. Create low- and high-growth scenarios to illustrate the range of potential growth scenarios based on potential changes in market conditions.
- Verify tax rate information for the current fiscal year. Identify jurisdictions with applicable general obligation bonds. Obtain and review the schedule of future debt service payments for applicable bonds, and forecast future assessed value growth for those jurisdictions. Calculate the estimated future tax rate for applicable GO bonds.
- Calculate Tax Increment Finance (TIF) revenues from FYE 2017 to FYE 2038 (the final year of the forecast period included in the adopted urban renewal plan and report).
- Write a brief memorandum, explaining the results of our analysis, documenting key assumptions, and comparing the new forecast to the original forecast included in the urban renewal report. Provide the Agency with a draft of this memorandum, and make necessary revisions requested by Agency staff.
- Provide the Agency with the final memorandum in PDF, as well as the Excel file with the financial analysis.



**EXHIBIT B**  
**COMPLIANCE WITH APPLICABLE LAW**

**279B.220 Conditions concerning payment, contributions, liens, withholding.** Every public contract shall contain a condition that the contractor shall:

(1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. [2003 c.794 §76a]

**279B.230 Condition concerning payment for medical care and providing workers' compensation.** (1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c]

**279B.235 Condition concerning hours of labor.** (1) Except as provided in subsections (3) to (6) of this section, every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) In the case of a contract for services at a county fair or for other events authorized by a county fair board, the contract must contain a provision that employees must be paid at least time

and a half for work in excess of 10 hours in any one day or 40 hours in any one week. An employer shall give notice in writing to employees who work on such a contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

(5)(a) Except as provided in subsection (4) of this section, contracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(6) This section does not apply to public contracts:

(a) With financial institutions as defined in ORS 706.008.

(b) Made pursuant to the authority of the State Forester or the State Board of Forestry under ORS 477.406 for labor performed in the prevention or suppression of fire.

(c) For goods or personal property. [2003 c.794 §77; 2005 c.103 §8f]

## EXHIBIT C INSURANCE

(The Project Manager must answer and initial 2, 3, and 4 below).

During the term of this contract, Contractor shall maintain in force at its own expense, each insurance noted below:

1. **Workers Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027).

Required by Agency ☒ I am exempt.(no employees) Signed \_\_\_\_\_

2. **Professional Liability** insurance with a combined single limit of not less than ☐ \$200,000, ☐ \$500,000, ☒ \$1,000,000, or ☐ \$2,000,000 each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for at least ☒ one year ☐ two years after the contract is completed.

☒ Required by Agency ☐ Not required by Agency By: \_\_\_\_\_

3. **General Liability** insurance, on an occurrence basis, with a combined single limit of not less than ☐ \$200,000, ☐ \$500,000, ☐ \$1,000,000, or ☐ \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage.

☐ Required by Agency ☒ Not required by Agency By: \_\_\_\_\_

4. **Automobile Liability** insurance with a combined single limit, or the equivalent of not less than ☐ \$200,000, ☐ \$500,000, or ☐ \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.

☐ Required by Agency ☒ Not required by Agency By: \_\_\_\_\_

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the Agency.

6. **Certificates of insurance.** As evidence of the insurance coverage's required by this contract, the Contractor shall furnish acceptable insurance certificates to Agency at the time Contractor returns signed contracts. For general liability insurance and automobile liability insurance the certificate will provide that the Agency, and its agents, officers, and employees are Additional Insureds but only with respect to Contractor's services to be provided under this contract. The certificate will include the 30-day cancellation clause, and will include the deductible or retention level. Insuring companies or entities are subject to Agency acceptance. If requested, complete copies of insurance policies shall be provided to the Agency. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retention's, and/or self-insurance.

**EXHIBIT D**  
**CERTIFICATION STATEMENT FOR CORPORATION**  
**OR INDEPENDENT CONTRACTOR**  
(Contractor complete A or B below, Project Manager complete C below.)

**A. CONTRACTOR IS A CORPORATION**

**CORPORATION CERTIFICATION:** I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

\_\_\_\_\_  
Entity

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**B. CONTRACTOR IS INDEPENDENT.**

**Contractor certifies he/she meets the following standards:**

1. The individual or business entity providing labor or services is registered under ORS chapter 701, if the individual or business entity provides labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
3. I represent to the public that the labor or services are to be provided by my independently established business as four or more of the following circumstances exist. **(Please check four or more of the following:)**
  - \_\_\_\_ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
  - \_\_\_\_ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership.
  - \_\_\_\_ C. Telephone listing is used for the business that is separate from the personal residence listing.
  - \_\_\_\_ D. Labor or services are performed only pursuant to written contracts.
  - \_\_\_\_ E. Labor or services are performed for two or more different persons within a period of one year.
  - \_\_\_\_ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

(Project Manager complete C below.)

**C. AGENCY APPROVAL**

**ORS 670.600 Independent contractor standards.** As used in various provisions of ORS chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contractor meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

\_\_\_\_\_  
Project Manager Signature

\_\_\_\_\_  
Date